

# BOARD OF ETHICS LOBBYING ORDINANCE

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Simon Silva, Deputy City Attorney

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# BOARD OF ETHICS LOBBYING ORDINANCE

- ▣ Lobbying Ordinance adds Chapter 2.55 to the CVMC
- ▣ It requires persons who are paid lobbyists to register as a lobbyist, identify who their clients are, and to regularly report their lobbying activities

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## BOARD OF ETHICS LOBBYING ORDINANCE

- ▣ BOE Ad Hoc Committee
  - Chris Shilling
  - Anthony Jemison
  - Fernando Kish
- ▣ City Clerk's Office
  - Donna Norris
  - Kerry Bigelow
- ▣ City Attorney's Office
  - Glen Googins, City Attorney Office
  - Simon Silva, Deputy City Attorney

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## BOARD OF ETHICS LOBBYING ORDINANCE

- ▣ We met as group over many meetings, including publically noticed meetings
- ▣ Reviewed and discussed other Cities' ordinances
- ▣ Discussed many issues and went section by section in drafting document
- ▣ Goal was to create an ordinance that provides for identification of Lobbyist and simple reporting of activities – to improve transparency

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## Board of Ethic Lobbyist Ordinance

- ▣ Also, met with DSD working Group
- ▣ Met with Chamber of Commerce
- ▣ Concerns:
  - Burdensome
    - Reporting and "Gotcha" moments
  - Costs
  - Regular interactions leading to registration requirements
  - Ex Parte Communication

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## BOARD OF ETHICS LOBBYING ORDINANCE

- ▣ Transparency is an important component of conducting the public's business and there are laws in place that support public transparency
- ▣ The Brown Act ensures the public's business is conducted in public via a timely noticed agenda.
- ▣ The California Public Records Act ensures public documents are available to the public, subject to limited exceptions
- ▣ The proposed ordinance furthers the continuum of public transparency by letting the public know who is attempting to influence municipal decisions

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## BOARD OF ETHICS LOBBYING ORDINANCE CHAPTER 2.55

- ▣ COMPONENTS
  - Definitions
    - ▣ Lobbyist
    - ▣ Lobbying
    - ▣ Designated City Official
  - Registering and Reporting
    - ▣ Annual
    - ▣ Activity Reports
  - Administration and Enforcement
    - ▣ City Clerk
    - ▣ Enforcement Authority
    - ▣ BOE Role

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## BOARD OF ETHICS DEFINITIONS

- ▣ Definitions are found in CVMC section 2.55.040

2.55 .035 defines a Lobbyist as follows:

*“Lobbyist means any Person who is employed, retained, or otherwise engaged for Compensation to Lobby, on behalf of another Person or Organization, any Designated City Official, either individually or collectively.”*

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## BOARD OF ETHICS DEFINITIONS

- ▣ A lobbyist means:
  - Any *Person*
  - That is *Compensated*
  - To *Lobby* for another
  - A *Designated City Official, individually or collectively*

MUST HAVE ALL CRITERIA MET TO BE A  
LOBBYIST

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## BOARD OF ETHICS DEFINITIONS

Person means:

"Any individual." (CVMC 2.55.040(J).)

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## BOARD OF ETHICS DEFINITIONS

- ▣ A lobbyist means:
  - *Any Person or Organization*
  - That is *Compensated*
  - To *Lobby* for another
  - A *Designated City Official*

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## BOARD OF ETHICS DEFINITIONS

Compensation means :

“any economic consideration provided in exchange for services rendered or to be rendered in the future, including, without limitation, salary and wages, stipends, payments, promises to perform or provide goods or services, fees, contingency fees, success fees, bonuses or awards.” (CVMC 2.55.040(B).)

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## BOARD OF ETHICS DEFINITIONS

- ▣ A lobbyist means:
  - *Any Person or Organization*
  - *That is Compensated*
  - *To Lobby*
  - *A Designated City Official*

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To Lobby means:

*"To influence or attempt to influence a Municipal Decision of the City of Chula Vista by Direct Communication, in public or in private, with any Designated City Official, either individually or collectively, including as part of City Council or any committee, board, task force, or other body of the City. Lobbying includes providing information, statistics, analysis, studies, or petitions to a Designated City Official." (CVMC 2.55.040.(F).)*

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## BOARD OF ETHICS DEFINITIONS

Direct Communication means :

"talking to or communicating with a person, either by telephone or cell phone (including "Skype" or "Facetime" type communication) or in person, or corresponding with a person, either in writing, by electronic transmission (including, but not limited to, emails, text messages, social media, or "Twitter," "Instagram," or "Facebook" type medium), or by facsimile machine." (CVMC 2.55.040(D))

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## BOARD OF ETHICS DEFINITIONS

- A lobbyist means:
  - *Any Person or Organization*
  - *That is Compensated*
  - *To Lobby (Direct Communication to influence a Municipal Decision)*
  - *A Designated City Official*

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## BOARD OF ETHICS DEFINITIONS

Designated City Official means:

“means any of the following: the Mayor, any Councilmember, Mayor and Councilmember staff members responsible for advising or reporting to the Mayor or Councilmember on policy matters or *Municipal Decisions* (including Chiefs of Staff and community liaisons), any City board or commission member, the City Manager, the City Attorney, the City Clerk, Deputy City Manager, any City department Director or Assistant Director, or the Zoning Administrator when acting as the decision maker in a Chapter 19 land use decision requiring a public hearing by the Zoning Administrator. . . .” CVMC 2.55.040(C)

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## BOARD OF ETHICS DEFINITIONS

□ A lobbyist means:

- *Any Person or Organization*
- *That is Compensated*
- *To Lobby (Direct Communication to influence a Municipal Decision)*
- *A Designated City Official*

If you are a Lobbyist because you meet all of the above then you must register who you are, identify who you represent, and report your activities.

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## BOARD OF ETHICS NOT INCLUDED ACTIVITIES

- ▣ Pursuant to Section 2.55.050, the following are not Lobbying:
  - Communications between other Government officials, in that capacity, and City Officials, including Designated City Officials
  - Communications with news media
  - RFP/RFQ processing
  - MOU and MMBA required union activities
  - Legal discussions
  - De Minimis Acts (2.55.050(K))

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## BOARD OF ETHICS REGISTERING AND REPORTING

CVMC 2.55.060 (Registration and Reporting and 2.55.070 (Identification))

1. Within 10 days of lobbying
2. Register (within 15 days) and do so every year thereafter (on or before 1/15). In registering, identify who they are, their client, and the subject of Lobbying. Pay a fee as determined by the Master Fee Schedule process
2. Submit quarterly reports of Lobbying activity, including:
  - ▣ Time spent in increments (1, 1-5, 5-10, more than 10)
  - ▣ With whom
  - ▣ Short Description of subject (20 words or so)
3. Disclose they are Lobbyist to Designated City Official when lobbying and at meetings before the Designated City Officials (including if they had lobbied within 30 days of meeting)

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## BOARD OF ETHICS ADMINISTRATION AND ENFORCEMENT

City Clerk administers the ordinance, meaning:

1. Prepare forms/reports. May include electronic formats
2. Accept forms/reports. May issue fines if late (\$20 per day late). May also waive late fees if late filing/reporting due to matters beyond control of filer.
3. Provide yearly report to counsel on registrations, complaints, and recommendations to improve administration of ordinance.
4. May provide, but not required to, provide courtesy notices. Lobbyist must be responsible for meeting their obligations under Chapter 2.55.
5. Refer Complaints to the Enforcement Authority

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## BOARD OF ETHICS ADMINISTRATION AND ENFORCEMENT

- ❑ Complaints are handled by the Enforcement Authority ("EA").
- ❑ The Enforcement Authority is special counsel assigned from the same pool of attorneys that are the enforcement authority from the City's Campaign Contribution Ordinance (CVMC Chapter 2.52)

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## BOARD OF ETHICS ADMINISTRATION AND ENFORCEMENT

Complaint Process includes the following:

1. Complaint received by Clerk
2. City Clerks determines if complaint complete: under penalty of perjury, full recitation of facts showing violation, made by CV resident or business owner. If complete refers to EA
3. EA determines if probable cause exist. The EA will determine appropriate remedy
4. Remedies include: referral to DA for criminal prosecution, civil remedy, or administrative fine

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## BOARD OF ETHICS ADMINISTRATION AND ENFORCEMENT

5. Once the EA has determined remedy then next EA on panel will continue case and pursue civil or administrative remedies.

- If criminal, then matter referred to DA.
- If civil, pursue in Superior Court
- If administrative, issue fine. Fine may be appeals in same manner as other City administrative fines.

6. EA may also refer to another prosecuting or enforcement agency.

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## Board of Ethics Duties

- ▣ The proposed ordinance requires the submission of information by lobbyist, in particular their activities
- ▣ Its important that this information be examined and provided to City decision makers (Council) and the Public
- ▣ That is where the BOE can play a continuing role – See CVMC Section 2.55.105

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## Board of Ethics Duties

- ▣ CVMC 2.55.105 provides that the BOE shall prepare a report for City Council and the public by March of each year (following a public hearing by the BOE) with the following information:
  - ID Lobbyist, Clients, and extent of Lobbying
  - Analysis of the types of Municipal Decisions lobbied upon
  - Analysis of Complaints (basis of Complaints) and fines issued/EA actions taken
  - Any other facts the BOE finds pertinent
  - Recommendations

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## BOARD OF ETHICS EFFECTIVE DATE

- ❑ CVMC 2.55.110 provides for an effective date for registering and reporting.
- ❑ Usually, the effective date of an ordinance is 30 days after second reading.
- ❑ City Staff are proposing to have the ordinance registration and reporting requirements be effective in January/February 2017, to permit public notice of its requirements and to allow time for creation of forms and other similar tasks to be completed.

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## Ex Parte Communications Policy

- ❑ It's a policy regarding City Council contacts with the public (including lobbyist) and disclosure
- ❑ Two types of Council action involved
  - Legislative
  - Quasi-Judicial
- ❑ Each has different requirements
  - Legislative—who was involved in influencing decision
  - Ex Parte- Acting as a Judge/Due Process---General Prohibition and Disclosure

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## Next Steps

- ▣ Refine Lobbyist Ordinance-
- ▣ Develop Ex Parte Policy
- ▣ More Community Outreach
- ▣ Return to BOE
- ▣ Take to City Council

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## BOARD OF ETHICS LOBBYING ORDINANCE

QUESTIONS?

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